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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AL AND PO CORPORATION, individually and on behalf of all others similarly situated, Plaintiff, v. QUALITY MEDICAL PRODUCTS, LLC, a Florida limited liability company, Defendant.	Case No. 14-cv-1243 The Honorable Thomas M. Durkin

PRELIMINARY APPROVAL ORDER

Having fully considered Plaintiff's Motion for Preliminary Approval of Class Action Settlement, the parties' arguments and submissions concerning the motion, and the applicable facts and law, the Court hereby finds and orders as follows:

1. Except as otherwise provided below, all capitalized terms used in this Preliminary Approval Order shall have the meanings and/or definitions given them in the Class Action Settlement Agreement ("Agreement"), attached to the Motion as Exhibit A.

2. The Court preliminarily approves the Agreement subject to the Final Approval Hearing, the purpose of which will be to decide whether to grant final approval to the Settlement Agreement reached by the Parties (the "Settlement"). The Court finds that the Agreement, the Settlement set forth therein and all exhibits attached thereto and/or to Plaintiff's Motion for Preliminary Approval of Class Action Settlement are fair, reasonable, and adequate, entered into in good faith, free of collusion to the detriment of the Settlement Class and within the range of possible judicial approval to warrant sending notice of the *AL and PO Corporation v. Quality*

Medical Products, LLC (the "Litigation") and the proposed Settlement to the Settlement Class and to hold a full hearing on the proposed Settlement.

3. For settlement purposes only, conditioned upon final certification of the proposed class and upon Final Judgment, the Court finds that the Litigation may be maintained on behalf of the following class:

> All persons and entities: (a) who in 2013 were subscribers to a telephone number to which was sent one or more facsimiles ("Subcontractor Faxes") inviting recipients to contact Quality Medical Products, LLC ("QMP") about its subcontractor network, which is used to service Medicare members receiving CPAP and BiPAP equipment, or who in 2013 were the owners of facsimile machines to which a Subcontractor Fax was sent; (b) who in 2013 were subscribers to a telephone number listed on one or both of the two spreadsheets QMP created for purposes of sending the Subcontractor Faxes; (c) who were recipients of a Subcontractor Fax; ***or*** (d) who in 2013 had a registration with the National Provider Identifier ("NPI") Registry that included a telephone number described in (a) or (b) above.
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> The Settlement Class does not include: (1) QMP and its subsidiaries and affiliates, employees, officers, directors, agents, and representatives and their family members; (2) Class Counsel; and (3) the judges who have presided over the Litigation.

4. The Court recognizes that QMP reserves all of its defenses and objections against and rights to oppose any request for class certification in the event that the proposed Settlement does not become Final for any reason. QMP also reserves all its defenses to the merits of the claims asserted in the event the Settlement does not become Final for any reason.

5. For settlement purposes only, the Court preliminarily appoints Plaintiff AL and PO Corporation ("Plaintiff") as representative of the Settlement Class.

6. For settlement purposes only, the Court preliminarily appoints the following attorney to act as Class Counsel for the Settlement Class:

Joseph J. Siprut
SIPRUT PC
17 North State Street
Suite 1600
Chicago, Illinois 60602

7. The Court appoints Kurtzman Carson Consultants, LLC ("KCC") as the Settlement Administrator. KCC will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require.

8. Notice shall be provided to the Settlement Class by **July 9, 2015**, within thirty-five (35) days after entry of this Order. Notice shall be in a form substantially the same as the Notice attached to the Agreement as Appendix 1 and shall be delivered by KCC via facsimile to the fax numbers on the two spreadsheets that QMP created in connection with the Subcontractor Faxes sent out in July and August 2013.

9. The form and content of the Notice are fair and reasonable, and Notice shall be disseminated to the Settlement Class as due process and Rule 23 of the Federal Rules of Civil Procedure require and in accordance with the Agreement.

10. The Court finds that the Notice and Notice Plan meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all potential members of the Settlement Class. The Notice is reasonably calculated, under the circumstance, to apprise the Settlement Class: (a) of the pendency of the Litigation; (b) of their right to exclude themselves from the Settlement Class and the proposed Settlement; (c) that any judgment, whether favorable or not, will bind all members of the Settlement Class who do not request exclusion; and (d) that any member of the Settlement Class who does not request exclusion may object to the Settlement, the request for attorneys' fees and costs and/or the service award and, if he or she

desires, enter an appearance personally or through counsel. The Court further finds that the notices are written in plain English and are readily understandable by members of the Settlement Class.

11. No later than **October 28, 2015**, seven (7) days before the Final Approval Hearing, KCC shall file a declaration with the Court attesting to completion of Notice, including the transmission via facsimile of the Notice, and the number of valid claims, opt-outs, and objections.

12. Any member of the Settlement Class who wishes to opt out or exclude himself or herself from the Settlement Class must submit an appropriate, timely request for exclusion sent to KCC at the address on the Notice and to be postmarked or faxed no later than sixty (60) days after the Notice is transmitted to the Settlement Class (the "Exclusion/Objection Deadline"). The opt-out request must (a) identify the member of the Settlement Class by name, address, and phone number and (b) state that he or she wishes to be excluded from the Settlement Class. A timely and valid request to opt out of the Settlement Class shall preclude the person opting out from participating in the proposed Settlement and he or she will be unaffected by the Agreement. KCC shall compile a list of all members of the Settlement Class who properly and timely submit an opt-out request (the "Exclusion List").

13. Any member of the Settlement Class who does not submit a timely and valid written request for exclusion shall be bound by all subsequent proceedings, orders and judgments in this Litigation, regardless of whether he or she currently is, or subsequently becomes, a plaintiff in any other lawsuit, arbitration or other proceeding against any of the Released Parties asserting any of the Released Claims.

14. KCC shall provide the Exclusion List to Class Counsel and Defendant's Counsel no later fourteen (14) days after the Exclusion/Objection Deadline and shall file the Exclusion List along with an affidavit attesting to the completeness and accuracy thereof with the Court no later than **October 28, 2015**, seven (7) days before the Final Approval Hearing. Class Counsel will be jointly responsible with KCC for ensuring that Defendant's Counsel receives the complete Exclusion List no later than fourteen (14) days after the Exclusion/Objection Deadline.

15. Any Settlement Class Member who does not properly and timely submit an opt-out request and who wishes to object to the fairness, reasonableness or adequacy of the Agreement or the proposed Settlement or who wishes to object to the award of attorneys' fees and expenses or Plaintiff's service award must file with the Court and serve on Class Counsel and Defendant's Counsel, postmarked no later than the Exclusion/Objection Deadline, a written statement of the objection signed by the Settlement Class Member containing all of the following information:

(a) A caption or title that identifies it as "Objection to Class Settlement in *AL and PO Corporation v. Quality Medical Products, LLC* (Case No. 14-cv-1243);"

(b) The objector's full name, address, email address, telephone number, and his or her counsel's name, address, email address, and telephone number;

(c) A written statement detailing each objection, the facts supporting them, the legal basis on which they are based, and the relief requested; and

(d) A written statement detailing whether he or she intends to appear at the Final Approval Hearing, either with or without counsel.

16. Any objections must be appropriately filed with the Court no later than the Exclusion/Objection Deadline, or alternatively they must mailed to the Court at the address below and postmarked no later than the Exclusion/Objection Deadline.

Clerk of Court
United States District Court for the Northern District of Illinois
219 South Dearborn Street
Chicago, Illinois 60604
Attention: "*AL and PO Corporation v. Quality Medical Products, LLC*, Case No. 14-cv-1243"

A copy of the objection must also be mailed to Class Counsel and Defendant's Counsel at the addresses below, postmarked no later than the Exclusion/Objection Deadline:

Joseph J. Siprut
SIPRUT PC
17 North State Street
Suite 1600
Chicago, Illinois 60602

Peter E. Pederson
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, IL 60601

17. No person shall be heard and no paper or brief submitted by any objector shall be received or considered by the Court unless such person has filed with the Clerk of Court and timely mailed to Class Counsel and Defendant's Counsel, as provided above, the concise written statement of objections as described above, together with copies of any supporting materials, papers or briefs. Any Settlement Class Member who does not file a written objection in the time and manner described above shall be: (a) deemed to have waived and forfeited any objections to the proposed Settlement; (b) foreclosed from raising any objection to the proposed Settlement at the Final Approval Hearing; (c) bound by all of the terms of the Agreement and by all

proceedings, orders and judgments by the Court; and (d) foreclosed from seeking any adjudication or review of the Settlement by appeal or otherwise.

18. The Court, within its discretion and at the request of Class Counsel or Defendant's Counsel, may order the deposition of any Settlement Class Member who objects to the fairness, reasonableness or adequacy of the Agreement or the proposed Settlement (or any witness identified in the written objection or notice of appearance) prior to the Final Approval Hearing. If the objecting Settlement Class Member fails to appear for any such deposition ordered by the Court, the objection will not be considered by the Court. If any witness fails to appear for deposition, that witness's testimony will not be considered by the Court. Any Settlement Class Member who fails to comply with the orders of the Court or the provisions of the Agreement regarding objections shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in this Litigation.

19. Any objecting Settlement Class Member who intends to appear at the Final Approval Hearing, either with or without counsel, must also file a notice of intention to appear with the Court (as well as serve on Class Counsel and Defense Counsel) postmarked no later than the Exclusion/Objection Deadline.

(a) If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objector who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted and a list identifying all objections such counsel has filed to class action settlements from January 1, 2010 to the present, the results of each objection, including any Court opinions ruling on the objections, and any sanctions by a Court in connection with filing an objection. Any attorney hired by a Settlement Class Member for the purpose of objecting to the Agreement or to the proposed Settlement or to the attorneys' fees and expenses will be at the Settlement Class Member's own expense; and

(b) If the objecting Settlement Class Member intends to request the Court allow the Class Member to call witnesses at the Final Approval Hearing, the objecting Class Member must provide a list of any such witnesses together with a brief summary of each witness's expected testimony no later than the Exclusion/Objection Deadline. If a witness is not identified in the notice of appearance, such witness shall not be permitted to object or appear at the Final Approval Hearing.

20. If any objection is deemed frivolous, the Court reserves the right to award appropriate costs and fees to Class Counsel and/or Defendant's Counsel.

21. The Court approves the Claim Form in substantially the same form as the Claim Form attached to the Agreement as Appendix 1.

22. Any Settlement Class Member who wishes to receive benefits under the Agreement must sign and return a complete and timely Claim Form in compliance with the process set forth in the Agreement faxed or postmarked no later than sixty (60) days after Notice is disseminated. Any Settlement Class Member who does not submit a complete and timely Claim Form in compliance with the Agreement shall not be entitled to any benefits under the Settlement, but nonetheless shall be barred by the release provisions of the Agreement and the Final Judgment and shall be deemed to have released the Released Parties from the Released Claims.

23. KCC will establish a post office box to be used for receiving requests for exclusion, Claim Forms and any other communications, provided that only KCC, QMP, Class Counsel, Defendant's Counsel, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in the Agreement.

24. The Court preliminarily enjoins all members of the Settlement Class unless and until they have timely excluded themselves from the Settlement Class from (a) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation and/or the Released Claims; (b) filing, commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any members of the Settlement Class who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims; and (c) attempting to effect opt outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims. This Agreement is not intended to prevent Settlement Class Members from participating in any action or investigation initiated by a state or federal agency.

25. A hearing to determine (a) whether the Settlement Class should be finally certified pursuant to Rule 23 of the Federal Rules of Civil Procedure and (b) whether the proposed Settlement is fair, reasonable and adequate shall be conducted in the United States

Courthouse, United States District Court for the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, Courtroom 1441, commencing on **November 4, 2015 at 9:00am.**

26. The Court reserves the right to continue the Final Approval Hearing without further written notice. If the Final Approval Hearing is continued from the currently scheduled date, information regarding a rescheduled Final Approval Hearing will be posted on the Court's docket.

27. Papers in support of the final approval of the Settlement, including responses to objections, shall be filed with the Court no later than **October 28, 2015**, within seven (7) days before the Final Approval Hearing.

28. An application of Class Counsel for an award of fees and expenses shall be filed with the Court no later than fourteen (14) days before the Exclusion/Objection Deadline.

29. All discovery and other pre-trial proceedings in this Litigation are stayed and suspended, pending the Final Approval Hearing, except such actions as may be necessary to implement the Agreement and this Order.

30. Defendant shall file proof of compliance with the notice requirements of The Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1715(b), no later than **October 28, 2015**, which is seven (7) days before the Final Approval Hearing. The Court finds that defendant may satisfy the notice requirements of CAFA by delivering an appropriate notice of this Settlement to the United States Attorney General and the Attorneys General of the 50 states.

31. This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (a) the proposed Settlement is not finally approved by the

Court, or does not become Final, pursuant to the terms of the Agreement or (b) the proposed Settlement is terminated in accordance with the Agreement or does not become effective as required by the terms of the Agreement for any other reason (such as QMP's exercise of the right to rescind under ¶29 of the Agreement). In such event, the proposed Settlement and Agreement shall become null and void and be of no further force and effect, and neither the Agreement nor the Court's orders, including this Order, shall be used or referred to for any purpose whatsoever.

32. Neither the Agreement, nor any of its terms or provisions, nor any of its exhibits, nor any of the negotiations or proceedings connected with it, nor this Order shall be construed as an admission or concession by QMP of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind, or of the appropriateness of the certification of the Settlement Class for purposes other than for settlement. This Order shall not be construed or used as an admission, concession or declaration by or against any of the Released Parties of any fault, wrongdoing, breach, or liability.

33. The terms and provisions of the Agreement may be amended by agreement of the Parties in writing and approval of the Court without further notice to Settlement Class, if such changes are consistent with this Order and do not limit the rights of the Settlement Class.

IT IS SO ORDERED:

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The Honorable Thomas M. Durkin,
United States District Court Judge, Northern District Of Illinois, Eastern Division

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